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OFFICE OF PETITIONS

In re Application of
Gupta et al
Application No.09/748,520
Filed: December 22, 2000
Attorney Docket No.GMES8081.045
Title of Invention: METHOD AND
APPARATUS FOR DISPLAYING REAL-TIME
STATUS OF PRODUCT AVAILABILITY,
ORDERS, AND SALES REVENUE

DECISION GRANTING
PETITION

This is a decision on the paper titled "Petition under 37 C.F.R. § 1.47(a) and 37 C.F.R. § 1.131(a) to Accept Declaration under 37 C.F.R. § 1.131 without Signatures of Aman Gupta and Amit Maheshwari," filed December 31, 2003, which is being treated as a § 1.183 waiver of § 1.131's requirement that all of the inventors sign the declaration of prior inventorship.¹

The petition under 37 CFR 1.183 is **GRANTED**.

The above-identified application was filed on December 22, 2000. Applicants submitted a 37 CFR 1.63 declaration on April 13, 2001. A non-final Office action was mailed on October 6, 2003. This office action set a shortened statutory period for reply of three months, with extensions of time obtainable under 37 CFR 1.136(a).

In response, on December 31, 2003 (certificate of mailing January 3, 2003), applicants submitted a response, including a declaration under 37 CFR 1.131. The 37 CFR 1.131 declaration states that all of the inventors were responsible for reduction to practice of the subject matter of the rejected claims prior to the date of the reference on which the October 6, 2003 rejection was based. The 37 CFR 1.131 declaration was signed inventor James Yenerich. Applicant has filed the instant petition to have the 37 CFR 1.131 declaration entered despite the fact that the declaration was not signed by joint inventors Gupta and Maheshwari. Petitioner asserts that inventors Gupta and Maheshwari are either unwilling or unavailable to execute the declaration.

37 CFR 1.131 states, in pertinent part:

When any claim of an application or a patent under reexamination is rejected,

¹ 37 CFR 1.47 only applies when an inventor refuses to sign the original 37 CFR 1.63 oath or declaration.

the **inventor** of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.²

In addition, the Manual of Patent Examining Procedure states that "an application or declaration by less than all named inventors of an application is accepted where it is shown that less than all named inventors of an application invented the subject matter of the claim or claims under rejection."³

Here, there has not been a party qualified under 37 CFR 1.42, 1.43, or 1.47. In addition, applicants do not contend that less than all of the named inventors of the application invented the subject matter of the claims under rejection. Accordingly, the proper parties to sign the 37 CFR 1.131 declaration include all of the joint inventors.

In order for a petition under 37 CFR 1.183 to be granted to waive this requirement that joint inventors Gupta and Maheshwari sign the § 1.131 declaration, petitioner must demonstrate that this is an extraordinary situation where justice requires waiver of the rules.


On instant petition, applicants have set forth the steps taken to obtain inventors Gupta and Maheshwari's signature on the § 1.131 declaration. Applicants have shown that a *bona fide* effort was made to present the § 1.131 declaration and supporting documentation to inventors Gupta and Maheshwari for signature. Under the circumstances, it is concluded that petitioner has demonstrated that this is an extraordinary situation requiring waiver of the rules.

The 37 CFR 1.131 declaration may be entered, despite the fact that its requirement that all of the inventors sign the declaration has not been satisfied.

Deposit account 07-0845 has been charged the \$130.00 petition fee.

The application file is being forwarded to Technology Center 2171 for consideration on the merits of the reply and the 37 CFR 1.131 declaration, filed December 31, 2003.

Telephone inquiries concerning this decision should be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.


Charlema R. Grant
Petitions Attorney
Office of Petitions

² 37 CFR 1.131(a) (emphasis added).

³ MPEP 715.04.